IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No.283 of 2006
in
Arbitration Petition No.32 of 2005

Harischandra Gutt & Co Pvt Ltd ..Appellants
vs
Mr Suresh Gaggar ..Respondent

Mr P.G.Pravin for appellants
None for the respondents

CORAM: KSHITIJ R. VYAS, C.J., &
ABHAY S. OKA,J.

DATE: JULY 11, 2006.

P.C.:-

This appeal is directed against the order dated 26th September, 2005 passed in Arbitration Petition No. 32 of 2005. The appellant has challenged the award made by the appellate arbitral tribunal of the Bombay Stock Exchange dated 15th September, 2004 whereby the award made by the original arbitral tribunal dated 11th June 2004 was confirmed and the appeal filed by the appellant was dismissed. We have heard the learned counsel for the parties. We have gone through the reasoning given in the order of the learned single Judge. In paragraph 4 of the impugned order the learned Judge has discussed the case of the appellant. According to the learned

Judge the appellate arbitral tribunal, has, for cogent reasons held that the case of the appellant that the shares were given by the respondent as security is incapable of being believed because of the conduct of the appellant of transferring the shares in the name of one of the directors of the appellant company and wife of the the director. According to the learned Judge if the nature of the transaction was security, it was for the appellant to enter the witness box and explain the natrue of the transaction. On the contrary, on the basis of the documents on record and the conduct of the appellant, it is clear that the shares were not handed over by the respondent to the appellant as security. It may be stated at this stage that out of the same transaction the respondent has made a counter claim which was rejected by the arbitral tribunal as barred by the law of limitation, which was challenged by the respondent and same was also dismissed by the learned single Judge. Since the counter claim as well as claim made by the appellant both were dismissed by the learned Judge, it is an additional ground for us not to entertain this appeal. The claim of the appellant has been considered by the original arbitral tribunal and the appellate arbitral tribunal and the learned Judge has also rejected the petition on the basis of the documents produced on record. Therefore no interference is called for with the impugned

order. Appeal is accordingly dismsised.

CHIEF JUSTICE

ABHAY S. OKA, J.